

Amendment No. 1 to SB0639

Marrero B
Signature of Sponsor

AMEND Senate Bill No. 639

House Bill No. 692*

by deleting all language following the enacting clause, and by substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Section 45-17-102, is amended by deleting subdivision (3) in its entirety and by substituting instead the following language:

(3) "Deferred presentment" or deferred presentment services" means a short-term loan entered into between a licensee and the maker of a check pursuant to a written agreement involving the following combination of activities in exchange for the payment interest:

(A) Accepting a check dated on the date it was written;

(B) Money is advanced to the maker of the check and the deposit of the check is deferred until a date certain;

(C) The presentment of the check for payment, collection or deposit is deferred for the period of time included in the written agreement;

SECTION 2. Tennessee Code Annotated, Section 45-17-102, is further amended by adding the following language as a new, appropriately designated subdivision:

() "Loan" or "short-term loan" means the deferred presentment of a check for payment, collection or deposit;

SECTION 3. Tennessee Code Annotated, Section 45-17-112, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) No licensee shall make a loan under this part when the borrower is not physically present in the licensee's business location.

(b) No licensee shall make a short-term loan from an office not located in Tennessee to a borrower who is physically present in Tennessee. Nothing in this section

shall prohibit a business not located or licensed in Tennessee from making a loan to a Tennessee resident who physically visits the out-of-state office of the business and obtains the disbursement of the loan funds at that location.

(c) No licensee shall make a short-term loan under this part by telephone, mail or the Internet.

(d) No licensee shall enter into a short-term loan with a member of the United States Armed Forces or a member's dependent that does not comply with the provisions of this part.

(e) Each licensee shall keep and use in its business any books, accounts and records the commissioner may require to carry into effect the provisions of this part and the administrative regulations issued hereunder. Every licensee shall preserve the books, accounts and records for at least two (2) years.

(f)

(1) A licensee may charge a service charge to defray operational costs, including, but not limited to, investigating the checking account and copying required documents, photographing the person signing the check, securing the check and customer records in a safe, fire-proof place, maintaining records as required by this part, maintaining required capital and liquidity, processing, documenting and closing the transaction, and for other expenses and losses. Such service charge may be equal to three percent (3%) of the total amount of the loan, which charge may be deducted in advance from the principal of the loan; provided that such service charge shall be deemed to be interest and shall be included in the calculation to determine the annual percentage rate which is set pursuant to subdivision (2).

(2) Interest may be collected by the licensee for the loan. A licensee shall not impose a service charge and interest, which when calculated together, is greater than an annual percentage rate of thirty-six percent (36%).

(3) A licensee or its affiliate shall not for a fee renew, roll over, refinance or otherwise consolidate a short-term loan for a borrower.

(4)

(i) A transaction entered into in violation of this part is void and unenforceable in law or equity.

(ii) The making of a short-term loan under this part which violates any provision of this part is unlawful as an unfair, false, misleading or deceptive act or practice in violation of the Tennessee Consumer Protection Act. The attorney general or the commissioner may enforce the provisions of this part. A borrower of a short-term loan that violates any provision of this part may bring an action pursuant to the Tennessee Consumer Protection Act, compiled in Tennessee Code Annotated, title 47, chapter 18.

(g)

(1) The check accepted from the borrower for deferred presentment shall be payable to the licensee.

(2) No licensee shall accept a check for deferred presentment unless the borrower is the maker of the check.

(3) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

(h)

(1) Each short-term loan shall be made according to a written agreement that shall be signed by the borrower and the licensee or an authorized agent of the licensee and be made available to the commissioner upon request.

(2) Each licensee who engages in a short-term loan shall give the borrower orally and in writing before the short-term loan agreement is signed a statement of the annual percentage rate applicable to the loan, a clear

description of the payment obligations and terms of the agreement and the disclosures required by the Consumer Credit Protection Act (15 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the commissioner upon request.

(3)

(i) In addition, the licensee shall inform the borrower of the date on which the check will be deposited or presented by the licensee.

(ii) The maker of a check shall have the right to redeem the check from the licensee before the agreed date of deposit upon payment to the licensee of the amount of the check and any accrued interest which may be due.

(iii) A licensee shall not defer presentment of any personal check for more than thirty-one (31) calendar days after the date the check is tendered to the licensee.

(4) The commissioner may promulgate rules establishing additional requirements in order to assure complete and accurate disclosure. The department of financial institutions shall promulgate rules requiring each licensee to issue a standardized consumer notification and disclosure form in compliance with federal truth-in-lending laws prior to entering into any deferred presentment transaction. The required style, content and method of executing the form shall be specifically prescribed by the rules and shall be designed to ensure that the consumer, prior to entering into a deferred presentment transaction, receives and acknowledges an accurate and complete notification and disclosure of the itemized and total amounts of all service charges and interest that will or potentially could be imposed as a result of the agreement.

(5) A licensee shall issue a receipt to each person for whom a licensee defers deposit of a check.

(h)

(1) Within five (5) business days after being advised by the payer financial institution that a check has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee shall notify the commissioner of financial institutions and the district attorney general for the district in which the check was received. If a check is returned to the licensee by the payer financial institution for any of these reasons, the licensee shall not release the check without the consent of the commissioner, district attorney general or other investigating law enforcement authority.

(2)

(i) If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee shall have the right to all civil means available and allowed by law to collect the check, including the right to collect court costs incurred in bringing the civil action as authorized in § 47-29-101(a)(4), (b) and (c) and shall further have the authority to assess a handling charge against the maker or drawer in the amount authorized by § 47-29-102; provided, only one handling charge may be collected with respect to any check, even if the check has been re-deposited and returned more than once; provided, however, that the licensee shall not have the right to collect attorney's fees relating to the check. No other provisions of title 47, chapter 29, are applicable to or for a licensee under this chapter. No individual who issues a personal check to a licensee under this chapter shall be convicted under the provisions of § 39-14-121.

(ii) Each licensee shall comply with the Fair Debt Collection Practices Act, 15 U. S. C. 1692, et seq., when collecting any loan under this part.

(i) A licensee shall comply with all provisions of state and federal law regarding cash transactions and cash transaction reporting.

(j) No licensee may alter or delete the date on any check accepted by the licensee. No licensee may accept an undated check or a check dated on a date other than the date on which the licensee accepts the check.

(k) Consistent with the nature of deferred presentment transactions, no licensee shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person.

(l) Each licensee must pay the full amount of any check cashed in cash or by check issued by the licensee, less only the charges permitted under this part. Payment by a licensee by means of a check shall not cause the licensee to be subject to the provisions of title 45, chapter 7, part 2.

(m) Each licensee shall display its license in a conspicuous location in its place of business and shall post a notice in a conspicuous location in its place of business containing a description of the charges imposed by the licensee.

(n)

(1) No borrower shall have more than one (1) short-term loan outstanding at any one (1) time, and the face value on the loan shall not exceed five-hundred dollars (\$500). No licensee shall make a short-term loan under this part to a borrower who already has a short-term loan outstanding to any licensee.

(2) No licensee or any person related to the licensee by common ownership or control shall have outstanding more than one (1) check from any one (1) customer at any one (1) time, with the aggregate face value of all outstanding checks from any one (1) customer not to exceed five hundred dollars (\$500).

(3) Each licensee shall inquire of any person seeking to obtain a short-term loan under this part, whether person has any outstanding short-term loans to any licensee or has obtained a short-term loan within the previous ninety (90)

days from any licensee. If the borrower represents in writing that the borrower does not have a short-term loan outstanding to any licensee, and has not obtained a short-term loan within the previous ninety (90) days from any licensee, and a licensee's independent investigation is consistent with such representation, a licensee may make a short-term loan to the borrower in an amount that does not exceed five hundred dollars (\$500). If the borrower represents in writing that the borrower has a short-term loan outstanding to any licensee or has obtained a short-term loan within the previous ninety (90) days, or if a licensee's independent investigation reveals that a borrower has a short-term loan outstanding or has obtained a short-term loan within the previous ninety (90) days, a licensee shall not make a short-term loan to that borrower until the borrower represents to the licensee in writing that the borrower qualifies to obtain a new short-term loan under the requirements set forth in this section.

(o) A licensee shall not use any device or agreement, including agreements with affiliated licensees, with the intent to obtain greater charges than otherwise would be authorized by this part.

(p) No licensee shall indicate through advertising, signs, billhead, or otherwise that checks may be presented for deferral under this part without identification of the bearer of the check; and any person seeking to present a check for deferral shall be required to submit reasonable identification as prescribed by the licensee. The provisions of this subsection shall not prohibit a licensee from accepting a check for deferral simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.

(q) A licensee shall not engage in any activity to evade the requirements of this part, including assisting a borrower to obtain a loan on terms that would be prohibited by this part, making loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates under the pretext of an installment sale of goods or services.

(r) A licensee shall not draft funds electronically from any depository institution in this state, or bill any credit card issued by such an institution, in connection with any short-term loan authorized under this part. Nothing in this subsection shall prohibit the conversion of a negotiable instrument into an electronic form for processing through the automated clearing house system.

SECTION 4. This act shall take effect July 1, 2009, the public welfare requiring it.